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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

TERRY LANE et al.,

Plaintiffs and Appellants,

v.

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA,

Defendant and Respondent.

B213048

(Los Angeles County  
Super. Ct. No. BC311865)

APPEAL from judgments of the Superior Court of Los Angeles County,  
Carolyn B. Kuhl, Judge. Affirmed.

Kiesel Boucher Larson, Raymond P. Boucher, Michael Eyerly; Arias, Ozzello &  
Gignac, Mike M. Arias and Arnold C. Wang for Plaintiffs and Appellants.

Marlin & Saltzman, Louis M. Marlin, Alan S. Lazar and Lynn P. Whitlock for  
Defendant and Respondent.

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## INTRODUCTION

Plaintiffs Terry Lane, Norma Lee, Mary Zimmerman, and Cynthia Tolhurst are relatives and family members of decedents who enrolled in the UCLA Willed Body Program and whose bodies were donated to that program upon their deaths. Plaintiffs sued the Regents of the University of California (the Regents) for negligence and intentional infliction of emotional distress because of alleged wrongdoing and mishandling of donated bodies by the UCLA Willed Body Program.

Plaintiffs appeal from judgments entered following the trial court's grant of summary judgment in favor of the Regents. Based on *Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244 (*Conroy*) and *Regents of the University of California v. Superior Court* (2010) 183 Cal.App.4th 755 (*Waters*), we find that the donation agreement executed by the donor and the Uniform Anatomical Gift Act (the UAGA) (Health & Saf. Code, § 7150<sup>1</sup> et seq.) define the rights and duties associated with an anatomical gift. Under, the rights of a donee created by an anatomical gift are superior to the rights of others, and UCLA as the donee had the exclusive right to control the disposition of a donated body's remains. The terms of the written donation agreement determine the duties imposed on the donee, and the only enforceable restrictions on a donation are those found in the terms of the document of gift executed in accordance with the UAGA. Therefore representations which UCLA made to family members, such as plaintiffs, about the disposition of a donor's remains create no additional duties owed to them beyond those in the document of gift. We conclude that the Regents owed no duty to plaintiffs as surviving relatives of a willed body donor, summary judgment was properly granted on the complaint for negligence, and we affirm the judgments.

## FACTUAL AND PROCEDURAL HISTORY

*Plaintiff Terry Lane:* Terry Lane is the daughter of donor John O. Lee, who executed a document of gift on April 11, 1996, stating that "it is my wish to donate my body to the Department of Anatomy, School of Medicine, of the University of California

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<sup>1</sup> Unless otherwise specified, statutes in this opinion will refer to the Health and Safety Code.

at Los Angeles, immediately following my death, for teaching purposes, scientific research, or such purposes as the said University or its authorized representative shall in their sole discretion deem advisable.” Lane witnessed Lee’s execution of the document of gift, but could not recall seeing or reading the document before Lee’s death. Lane stated that UCLA represented to donor John O. Lee that only UCLA medical staff and students would have access to donated remains, that after studies were completed remains were essentially intact and were individually cremated, and that cremated remains were scattered at El Toro Memorial Park, at a cemetery, or at sea, or were returned to the family. These representations were made to donors in material every donor received from UCLA and every donor was asked to share with family members. Lane made no independent investigation of the UCLA Donated Body Program, and her only information about the donation came from what John O. Lee told her and from the document of gift he signed.

Donor John O. Lee died on July 29, 2000, at the age of 74. Until her father passed away, Lane did not think about what would happen to his body after UCLA was finished with it. There was no evidence in John O. Lee’s donation file that UCLA promised or represented to his family, or that he or his family ever requested or arranged with UCLA, to return his cremated remains to the family. After John O. Lee’s death, Lane and her sister Yvonne Stephens discussed return of his ashes with a funeral director the family had retained to conduct a memorial service. The funeral director, Daniel D. Dilday, wrote a letter to UCLA requesting information regarding the disposition of John O. Lee’s remains, in connection with the proposed placement of a memorial grave stone at Riverside National Cemetery in remembrance of Mr. Lee. On October 18, 2000, Lucelva Mendez responded to Dilday’s letter, advising that after studies were completed, John O. Lee’s remains would be sent to El Toro Memorial park for scattering and that that this should occur no longer than three years from the date of death.

Lane learned of allegations concerning the UCLA Donated Body program from her sister Yvonne, who told her to read a Los Angeles Times Article. None of the media reports she read dealt with John O. Lee’s donated body.

Lane's claimed emotional distress caused by the Donated Body Program was that she experienced some anxiety, she was angry, and she was sad.

*Plaintiff Norma Lee:* Norma Lee was the wife of donor John O. Lee. Norma Lee stated that UCLA represented to donor John O. Lee that only UCLA medical staff and students would have access to donated remains, that after studies were completed remains were essentially intact and were individually cremated, and that cremated remains were scattered at El Toro Memorial Park, at a cemetery, or at sea, or were returned to the family. These representations were made to donors in material donors received from UCLA and were asked to share with family members.

In a discussion about the donation, John O. Lee told Norma Lee that he wanted his body used for research.

After John O. Lee died and his body was donated to UCLA, Norma Lee testified that she heard his body was used for research. Norma Lee also testified that nobody told her that anything wrong had happened to her husband's body.

Norma Lee stated that she suffered emotional distress when she learned of her husband's remains being mishandled and of not knowing what happened to his remains. She was also saddened because she could not be interred next to him at a military cemetery after her death.

*Plaintiff Mary Zimmerman:* Mary Zimmerman is the daughter of donor Thomas Elwood, who enrolled in the UCLA Donated Body Program on April 9, 1967, by executing a document of gift stating: "it is my wish to donate my body to the Department of Anatomy, School of Medicine, of the University of California at Los Angeles, immediately following my death, for teaching purposes, scientific research, or such purposes as the said University or its authorized representative shall in their sole discretion deem advisable." Zimmerman did not assist or facilitate in Elwood's enrollment, although she saw the paperwork he signed donating his body to UCLA. Thomas Elwood died on June 1, 1999, at the age of 94.

From her mother, Mary Zimmerman had the impression that her father's cremated remains could be returned to her mother. Zimmerman claimed she was entitled to return

of the cremated remains, and alleged that UCLA agreed to return cremated remains to her family upon completion of use and study of Thomas Elwood's body. Zimmerman reviewed paperwork that her father had reflecting this arrangement with UCLA. Zimmerman stated that it was her understanding that her father's body would remain at UCLA for medical research by UCLA medical students, and that UCLA would use the remains for medical research and would treat them with dignity and respect. Zimmerman herself made no special arrangements with UCLA to have cremated remains returned to the family and she was not aware that any other family member made such arrangements. Elwood did not request that UCLA return cremated remains to the family. Thomas Elwood's donated body was cremated on November 23, 1999, and cremated remains were scattered at El Toro Memorial Park on April 27, 2000.

When she learned of allegations concerning the UCLA Donated Body Program from radio news reports, Zimmerman was shocked to hear these allegations, and felt sad and disgusted. She was upset when she thought about the allegations concerning the Donated Body Program, but had no physical symptoms related to emotional distress caused by the Donated Body Program. She had not sought treatment from health care providers for emotional distress, lost no time from work due to emotional distress, and had carried on with her normal daily activities despite the distress caused by the Donated Body Program.

*Plaintiff Cynthia Tolhurst:* Cynthia Tolhurst is the great-niece of donor Inez Peterson, the sister of Tolhurst's grandmother. Tolhurst never lived with Peterson, who did not raise or provide support for Tolhurst, although Tolhurst was close to Peterson and considered herself a close family member.

Peterson enrolled in the UCLA Donated Body program on May 18, 1993, and executed a document of gift providing that "it is my wish to donate my body to the Department of Anatomy, School of Medicine, of the University of California at Los Angeles, immediately following my death, for teaching purposes, scientific research, or such purposes as the said University or its authorized representative shall in their sole discretion deem advisable." Tolhurst signed the document of gift as a witness, but could

not recall whether she read it. Peterson listed Tolhurst as “next of kin or heir other than spouse” on her personal data submitted when she enrolled in the UCLA Willed Body Program.

Based on representations made to donors in material which every donor received from UCLA and was asked to share with family members, UCLA represented to Peterson that only UCLA staff and students would have access to donated remains, that remains were essentially intact after studies were completed, that remains were individually cremated, and that cremated remains were scattered at El Toro Memorial Park, at a cemetery, or at sea, or were returned to the family. Tolhurst, however, had never seen “The Gift of Knowledge.” She did not see “Frequently Asked Questions About UCLA’s Willed Body Program” until two weeks before her deposition. She did not know if Peterson received either document. Tolhurst did no investigation of the UCLA Donated Body Program before Peterson’s death, and her only information about that program came from Peterson or from Henry Reid when he came to retrieve Peterson’s body after she died on January 6, 2002. Tolhurst claimed that Reid told her Peterson’s body would be taken to UCLA and would be cremated after three years, and that the ashes would be scattered in a rose garden on the UCLA campus.

Peterson’s body was cremated on September 6, 2003, and interred at El Toro Memorial Park in Lake Forest, California, on December 10, 2003.

Tolhurst learned of allegations concerning the UCLA Donated Body Program from a Los Angeles Times article in 2004. She knew of no other facts as to what happened to Peterson’s body.

Upon hearing media reports concerning allegations of wrongdoing in the UCLA Donated Body Parts Program, Tolhurst was upset, angry, and concerned. Tolhurst has experienced nightmares and, intermittently, trouble sleeping. At times Tolhurst felt a lack of energy when she thought about the UCLA Willed Body Program, but this did not incapacitate her and her emotional distress did not limit her normal daily activities. Tolhurst received no treatment for emotional distress caused by UCLA, took no medication for emotional distress or sleeping problems, and missed no time from work.

*Complaint Against the Regents and Other Defendants:* The operative complaint is the Third Amended Complaint, filed against the Regents, the UCLA School of Medicine, Henry Reid, Ernest V. Nelson, Albennie E. Nelson, Johnson & Johnson, and Depuy Mitek, Inc. The complaint alleged that since 1997, Reid, Director of the UCLA Willed Body Program, and other employees improperly sold donated bodies and body parts for profit to Johnson & Johnson, Depuy Mitek, and NuVasive, Inc.

The complaint alleged that in 2003, the California Department of Health Services determined that NuVasive was receiving cadaveric material from UCLA's Willed Body Program. On March 7 and 8, 2004, Reid and Nelson were arrested on charges stemming from sale of bodies and body parts from the UCLA Willed body Program. By court order, the UCLA Willed Body Program was shut down. UCLA issued statements apologizing for causing pain and suffering to donors' family members.

The negligence cause of action alleged that UCLA employees induced decedents to will their bodies to UCLA for medical and scientific purposes, and promised decedents and represented to plaintiffs that decedents' bodies would be handled and disposed of in a proper, dignified manner or that decedents' ashes would be scattered in a rose garden and that decedents' bodies would not and could not be sold.

The negligence cause of action alleged that UCLA relied on the plaintiffs to read information in documentation provided by UCLA, to notify UCLA of decedents' death, to refrain from having decedents' bodies autopsied or embalmed or otherwise disposing of decedents' bodies, and to arrange for UCLA to pick up decedents' bodies. The complaint alleged that UCLA created a relationship between itself and plaintiffs by instructing donors to inform relatives of their donation of remains to the Willed Body Program, by having survivors carry out donors' intentions, and by making public statements that decedents' bodies would be treated and disposed of properly. The complaint alleged that the Regents owed plaintiffs the duty to handle decedents' bodies according to cremation and funeral industry standards, to ensure decedents' remains would not be sold, and to act with ordinary care regarding use and disposition of decedents' remains. The complaint alleged that the Regents breached these duties, failed

to handle and dispose of decedents' remains properly, and conspired to engage in illegal sales of donated bodies for profit.

A cause of action for intentional infliction of emotional distress alleged that placement of remains in an El Toro Memorial Park rose garden was a fiction told to donors and their families to induce them to donate. The complaint alleged that donors were told that bodies would be handled with dignity and respect and would not be sold, and donors passed these false promises to their families. The complaint alleged that UCLA then mishandled and disposed of donated bodies and caused plaintiffs to suffer serious emotional distress.

*The Regents' Motions for Summary Judgment:* In a stipulation and order approved by the trial court and filed on April 3, 2008, counsel for plaintiffs and for the Regents entered into a stipulation to permit the Regents to bring motions for summary judgment on specific issues. The parties sought to determine whether plaintiffs' claims could survive a summary judgment motion based on factual and legal arguments raised by the Regents which did not depend on deposition testimony of indicted witnesses Reid and Nelson, who at that time were not available for discovery. These issues were:

1. Whether plaintiffs had standing to assert their claims, an issue which could be stated as an issue of duty: whether the Regents owed plaintiffs any duties that would have been breached by the wrongdoing alleged in the complaint;
2. Whether Government Code section 815 made the Regents immune from liability for these claims; and
3. Whether plaintiffs had evidence of legally sufficient damages to support their claims.

The parties agreed that a decision in favor of the Regents on any of these issues as to any plaintiff was potentially dispositive as to that plaintiff's claims or case. If the trial court found against the Regents on these issues, the parties agreed that remaining issues in defendant's summary judgment motions should be continued until it was determined whether discovery of Reid and Nelson could be completed.



The Regents brought separate motions for summary judgment, or in the alternative summary adjudication, against Lane and Norma Lee, Tolhurst, and Zimmerman. The Regents' motions contended, inter alia, that plaintiffs had no evidence that would establish that the Regents' owed them a duty, no evidence to support their claim of intentional infliction of emotional distress, and no evidence of damages.

The trial court granted summary judgment in favor of the Regents as to Lane and Norma Lee, Tolhurst, and Zimmerman. The trial court found that the evidence was not sufficient to allow a jury to make a finding of severe emotional distress arising from actionable conduct by UCLA as to plaintiffs Lane and Norma Lee. The trial court found that Tolhurst's claims failed because she had not offered admissible evidence of a duty breached by UCLA. The trial court found that the document of gift executed by Zimmerman's father, Thomas Elwood, did not make a representation as to how the donation would be used, there was no admissible evidence that UCLA made representations to the donor or to Zimmerman that restricted the use of that anatomical gift, and therefore no conduct by UCLA gave rise to a claim of negligence or intentional infliction of emotional distress.

Judgments for the Regents and against Lane and Norma Lee and Tolhurst were entered on October 21, 2008. Judgment for the Regents and against Zimmerman was entered on December 17, 2008. Lane and Norma Lee, Tolhurst, and Zimmerman filed timely notices of appeal.

## ISSUES

Tolhurst and Zimmerman claim on appeal that the trial court erroneously granted summary judgment on the negligence cause of action because the trial court erroneously found that the Regents owed no duty to Tolhurst and Zimmerman.

Lane and Norma Lee claim on appeal that the trial court erroneously granted summary judgment on the negligence cause of action because the trial court erroneously required plaintiffs to show they suffered severe emotional distress, rather than requiring plaintiffs to show that they suffered serious emotional distress.

## DISCUSSION

### 1. *Standard of Review*

“A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We review the trial court’s decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. [Citation.] In the trial court, once a moving defendant has ‘shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,’ the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff ‘may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action . . . .’ [citations.]” (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476-477.) This court reviews orders granting or denying a summary judgment de novo. “We exercise ‘an independent assessment of the correctness of the trial court’s ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law.’ [Citation.]” (*Lockhart v. County of Los Angeles* (2007) 155 Cal.App.4th 289, 303.)

### 2. *Tolhurst and Zimmerman Have Not Shown That UCLA Owed Them Duties*

Tolhurst and Zimmerman claim that UCLA owed them a duty not to mishandle their relatives’ bodies by selling them to third-party commercial entities, which was not consistent with the UCLA Willed Body Program’s protocols and procedures, violated representations about its Willed Body Program which UCLA made to decedents and to the public, and was inconsistent with the terms of the donation agreement and the UAGA.

To establish liability for negligence, a plaintiff must prove duty, breach, causation, and damages. (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205.)

a. *Conroy Held That the Regents Had No Duty to the Surviving Relatives of a Willed Body Donor*

In *Conroy* the California Supreme Court rejected the arguments plaintiffs make in this case. In *Conroy*, which was also a willed body case, a donor executed a document of gift to the University of California. The University of California made representations to the donor's relative and then allegedly mishandled the donor's remains. Like the plaintiff in *Conroy*, Tolhurst and Zimmerman are surviving relatives of a willed body donor whose remains were allegedly mishandled, and they allege that the Regents made representations to them about the use and disposition of donated remains and failed to comply with those representations. Like the plaintiff in *Conroy*, Tolhurst and Zimmerman argue that those representations created legal duties, including a duty to avoid causing foreseeable emotional harm to the donor's family members. In *Conroy* the Supreme Court rejected these arguments and held that the UAGA and the document of gift defined the Regents' duties and that representations made by the University of California to the donor's family did not amend the document of gift. (*Conroy, supra*, 45 Cal.4th at pp. 1253-1254.)

In *Conroy*, the plaintiff's husband executed an agreement to donate his body to the U. C. Irvine Willed body Program. The donation agreement stated: “ ‘I here state that it is my wish to donate my body to the Department of Anatomy and Neurobiology, College of Medicine, University of California, Irvine (UCI), immediately following my death, for teaching purposes, scientific research, or such purposes as the said University or its authorized representative shall in their sole discretion deem advisable. My body, when delivered to UCI, will be unembalmed and in good condition. It is further understood and agreed that final disposition of my body by UCI shall be in accordance with the State Code.’ ”<sup>2</sup> After the husband's death his body was delivered to UCI. Approximately nine

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<sup>2</sup> The donation agreement executed by plaintiff's husband in *Conroy* was nearly identical to the donation agreements executed by Zimmerman's father Thomas Elwood and by Tolhurst's great-aunt Inez Peterson, except that their documents of gift did not contain the final sentence in the document of gift in *Conroy*.

months later, plaintiff saw news reports of misconduct at the UCI Willed Body Program and called UCI to inquire about her husband's body. The program's interim director later told plaintiff that the previous director failed to keep proper records and that UCI did not know what happened to her husband's body after it was delivered to UCI. Plaintiff then sued the Regents, alleging that as holder of the statutory right to control disposition of her husband's body, she had entrusted it to defendants under the UCI Willed Body Program for teaching and research purposes; that upon completion of the educational and research purposes for which the donation was made she was to receive her husband's remains; that plaintiff discovered that defendants used cadavers donated to the UCI Willed Body Program for unauthorized purposes, including private for-profit tutoring classes and transporting and dismembering of bodies for profit; that defendants failed to maintain records to ensure that cadavers were used only for authorized purposes and to enable return of remains to family members; and that her husband's body was misused in that UCI did not use it for medical research. (*Conroy, supra*, 45 Cal.4th at p. 1248.)

The Regents moved for summary judgment on causes of action for negligence, negligent misrepresentation, and fraud and intentional deceit. Plaintiff's opposition to the motion attached her declaration recounting a phone conversation with the director of the UCI Willed Body Program that took place before her husband executed the donation agreement. In that conversation, the director told plaintiff that after UCI completed its research, her husband's body would be cremated and the ashes scattered at sea, the family would be notified so they could take part in scattering those ashes at sea, and that plaintiff and her husband's physician would be advised of medical findings pertaining to her husband's body. Plaintiff's opposition also submitted evidence that the prior director had owned or colluded with several companies that profited from sales and use of donated cadavers. (*Conroy, supra*, 45 Cal.4th at pp. 1248-1249.)

The trial court granted the Regents' motion for summary judgment, the Court of Appeal affirmed, and the California Supreme Court also affirmed. We find that *Conroy* controls this case.

b. *The UAGA Defines the Rights and Duties Associated With an Anatomical Gift*

As in *Conroy* and *Waters*, Zimmerman and Tolhurst alleged that based on UCLA's promises and representations to the donors and to plaintiffs, the donation of the bodies of Elwood and Peterson created a duty to handle and dispose of decedent's remains in a proper, dignified manner that would not shock plaintiffs' sensibilities. *Conroy* rejected the existence of this duty, based on the terms of the document of gift and on UAGA statutes. (*Conroy, supra*, 45 Cal.4th at p. 1255; *Waters, supra*, 183 Cal.App.4th at pp. 767, 769-770.)

After Elwood and Peterson executed donation agreements and upon their deaths, the statutory right to control disposition of their bodies passed to UCLA, pursuant to former sections 7150.5, subdivision (h) and 7154, subdivision (a). (*Conroy, supra*, 45 Cal.4th at p. 1255; *Waters, supra*, 183 Cal.App.4th 767.) Former section 7154, subdivision (a) states, in relevant part: "Rights of a donee created by an anatomical gift are superior to rights of others[.]" As the statutory rights holders, UCLA had "the exclusive right to control the disposition of the remains[.]" (*Conroy*, at p. 1255; *Waters*, at p. 767.) Section 7100.1, subdivision (a) states, in relevant part: "A decedent, prior to death, may direct, in writing, the disposition of his or her remains and specify funeral goods and services to be provided. Unless there is a statement to the contrary that is signed and dated by the decedent, the directions may not be altered, changed, or otherwise amended in any material way, except as may be required by law[.]" Thus the terms of a written donation supersede the rights of statutory rights holders (who are defined in section 7100) to control disposition of the decedent's body. (*Conroy*, at p. 1257; *Waters*, at p. 767.) Close family members, such as plaintiffs Zimmerman and Tolhurst, do not have the legal right to alter written donation agreements executed by decedents Elwood and Peterson. Because the decedents' donations were "irrevocable" upon their deaths, plaintiffs did not enter into an agreement with UCLA regarding their donated bodies, and representations by UCLA did not cause plaintiffs to alter their legal relations with UCLA. (*Conroy*, at p. 1257; *Waters*, at p. 767.) The UAGA " " "recognizes and gives legal effect to the right of the individual to dispose of his own

body without subsequent veto by others.” ’ ’ (Conroy, at p. 1257, quoting 8A West’s U. Laws Ann., (2003) Anatomical Gift Act (1987) com. to § 2, pp. 26-27; Waters, at pp. 767-768.) As former section 7150.5, subdivision (h) stated, “An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor’s death.”<sup>3</sup> Defendant Regents owed no duty to plaintiffs regarding disposition of decedents’ bodies.

*c. The Terms of the Document of Gift, Executed Pursuant to the UAGA, Subject to State Law, Are the Only Enforceable Restrictions on a Donation; Representations Outside the Document of Gift Did Not Amend or Alter the Donation Agreement and Created No Duty to Plaintiffs*

Plaintiffs claim that UCLA made representations to them or to donors, which were not found in the UAGA or the donation agreement, which gave rise to a duty owed to them by UCLA. UCLA’s representations included assurances that UCLA would use donated body only for medical faculty, students, staff, or students in health-related professions, and that body parts could not legally be sold.

The plaintiffs in *Conroy* and in *Waters* similarly alleged that representations UCI made to them concerning disposition of their family members’ remains created legally enforceable duties to her. Rejecting that argument, *Conroy* and *Waters* held that representations made outside the document of gift cannot create legal duties. (*Conroy*, *supra*, 45 Cal.4th at p. 1253; *Waters*, *supra*, 183 Cal.App.4th at p. 768.) *Conroy* looked to the terms of the written donation agreement to determine the duties to be imposed on the donee. *Conroy* found that the only enforceable restrictions on a donation were those found in the terms of the document of gift executed in accordance with the UAGA. The

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<sup>3</sup> Former section 7150.5, subdivision (h) was repealed in 2007 (Stats. 2007, ch. 629, § 1), and was replaced by section 7150.35, subdivision (a): “Except as otherwise provided in subdivision (g) and subject to subdivision (f), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor’s body or part if the donor made an anatomical gift of the donor’s body or part under Section 7150.20 or an amendment to an anatomical gift of the donor’s body or part under section 7150.25.”

donation agreement did not specify that remains were to be returned to the plaintiff. Therefore *Conroy* rejected the plaintiff's allegation that the Regents breached their duty to return her husband's ashes to her following use of the donated body. (*Conroy*, at p. 1253; *Waters*, at p. 769.)<sup>4</sup>

The document of gift executed by Thomas Elwood did not state that after use of his body, the UCLA Willed Body Program was required to return his cremated remains to Zimmerman or to her mother. The document of gift executed by Inez Peterson did not state that remains were individually cremated, that cremated remains were scattered at El Toro Memorial Park, at a cemetery, or at sea, or were returned to the family, and did not state that Peterson's body would be cremated after three years and that ashes would be scattered in a rose garden on the UCLA campus. The documents of gift executed by Elwood and Peterson made no other provision for disposition of those bodies after use by the UCLA Willed body Program. Because Elwood and Peterson executed their donation agreements before January 1, 2001, the UAGA did not require return of cremated remains and did not give family members the right to specify final disposition of the donee's remains. Consequently representations not found in the document of gift created no duty owed by the Regents to Zimmerman or Tolhurst regarding disposition of the bodies of Elwood and Peterson. Enforcing such duties would violate section 7100.1, subdivision (a), prohibiting alteration, change, or amendment of a decedent's written disposition of his or her remains.

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<sup>4</sup> The provision of the UAGA in effect at the time of the donation of Mr. Conroy's body, moreover, did not require return of his remains. Although section 7151.40, subdivision (b) required the donee to return the decedent's cremated remains unless the donor had designated otherwise in the document of gift, this provision applied only to donations made pursuant to a donation agreement executed after January 1, 2001. *Conroy* stated that the California Supreme Court was "loath to expand a donee's duties in this area beyond those the Legislature has provided." (*Conroy, supra*, 45 Cal.4th at p. 1254.) Thus the UAGA did not require return of remains of a body donated before January 1, 2001.

*Conroy* and *Waters* rejected the imposition of duties on the donee of a decedent's body when those duties have no source in the donation agreement or in state law. Permitting family members to impose additional obligations on the Regents would violate the holdings of *Conroy* and *Waters*.

d. *Conclusion*

Plaintiffs have not shown that UCLA owed duties to surviving relatives of a willed body donor.

3. *Plaintiffs Have Not Shown That the Document of Gift Contained an Implied Restriction That Donated Remains Could Not Be Used For Any Purpose Other Than Medical Research or Education*

Plaintiffs Zimmerman and Tolhurst claim that the documents of gift contained an implied restriction that donated remains may not be used for any purpose other than medical research or education. The complaint, however, did not allege that the documents of gift contained this restriction or that such a restriction created a duty which the Regents owed to the plaintiffs. The Regents had the burden on summary judgment of negating only those theories of liability alleged in the complaint. The Regents were not obligated to refute liability on some theoretical possibility not included in the pleadings. (*Conroy, supra*, 45 Cal.4th at p. 1254.)

The documents of gift executed by Elwood and Peterson, moreover, stated that the donors wished to donate their bodies to the UCLA School of Medicine immediately following their deaths “for teaching purposes, scientific research, or such purposes as the said University or its authorized representative shall in their sole discretion deem advisable.” Thus the donation agreement granted sole discretion to UCLA or its authorized representative to determine the purposes for which the donated body is to be used, and contained no restriction on that discretion.



4. *Lane and Lee Have Not Shown That UCLA Owed Duties to Them as Surviving Relatives of a Willed Body Donor, and Summary Judgment Was Properly Granted in Favor of Defendant Regents on the Negligence Cause of Action*

For the reasons stated, *supra*, Lane and Lee have not shown that UCLA owed duties to them as surviving relatives of a willed body donor. The terms of a written donation supersede the rights of statutory rights holders (defined in section 7100) to control disposition of the decedent's body. (*Conroy, supra*, 45 Cal.4th at p. 1257; *Waters, supra*, 183 Cal.App.4th at p. 767.) Close family members, such as plaintiffs Lane and Lee, do not have the legal right to alter the written donation agreement executed by decedent John O. Lee. Defendant Regents owed no duty to plaintiffs regarding disposition of decedent's body. Representations UCLA made outside the document of gift did not create legal duties, and duties imposed on the donee were found in the terms of the document of gift executed in accordance of the UAGA. The document of gift executed by John O. Lee made no provision for disposition of the donor's body and gave UCLA complete discretion for the disposition of that donated body. Because they had no source in the donation agreement or in state law, representations about the disposition of that body that UCLA made to Lane and Lee after the donor's death did not create a duty to plaintiffs regarding disposition of John O. Lee's donated body.

Lane and Lee claim that the trial court erroneously granted summary judgment on the negligence cause of action because the trial court found that plaintiffs had not offered sufficient evidence of severe emotional distress and erroneously required the plaintiffs provide evidence of their "severe" emotional distress rather than of their "serious" emotional distress. California law does not recognize an independent tort of negligent infliction of emotional distress. The tort is negligence, a cause of action whose essential elements include a duty to plaintiff. (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 984-985.) Because, as we have found, defendant Regents owed no duty to plaintiffs, summary judgment was properly granted in favor of defendant Regents on the negligence cause of action and it is unnecessary to address the issue of emotional distress damages.

DISPOSITION

The judgments are affirmed. Costs on appeal are awarded to defendant Regents of the University of California.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.